

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Denise L. Brunson o/b/o J.S.B., a minor,)	
)	C/A No.: 4:09-1911-MBS
Plaintiff,)	
)	
vs.)	
)	OPINION AND ORDER
Michael J. Astrue, Commissioner of)	
Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Denise L. Brunson filed an application for social security disability benefits on behalf of her minor son. On August 30, 2007, an Administrative Law Judge issued a decision denying Plaintiff's claim for benefits. On March 27, 2009, the Appeals Council determined that there was no basis for granting Plaintiff's request for review. Plaintiff requested an additional thirty days to file a civil action seeking judicial review of the "final decision" of the Commissioner. The Appeals Council granted Plaintiff until July 9, 2009 to file a civil action.

Plaintiff filed the within complaint on July 20, 2009. On February 4, 2010, the Commissioner filed a motion to dismiss Plaintiff's complaint as untimely. See 42 U.S.C. § 405(g) (providing that a complaint seeking judicial review must be commenced within sixty days after mailing of the notice of the Commissioner's final decision, or within such further time as the Commissioner may allow). Plaintiff filed no response to the motion to dismiss.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III. On April 16, 2010, the Magistrate Judge filed a Report and Recommendation in which he determined that the complaint was barred by the applicable statute of limitations. Accordingly, the Magistrate Judge recommended that the

Commissioner's motion to dismiss be granted and Plaintiff's complaint be dismissed as untimely under § 402(g). Plaintiff filed no objections to the Report.

The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

After a thorough review of the Report and the record in this case, the court adopts the Report and Recommendation and incorporates it herein by reference. The Commissioner's motion to dismiss (Entry 5) is **granted**, with prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

May 4, 2010.